UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBIN RODERICK

Plaintiff,

v.

MAZZETTI & ASSOCIATES, INC., WALTER VERNON, ALBERT OSTROY, AND ANGELICA GRAHAM

Defendants.
/

No. C 04-2436 MHP

ORDER
Motion to Compel Arbitration and Stay Proceedings

On June 21, 2004, plaintiff filed this action against defendants ("Mazzetti") alleging wrongful termination, age discrimination, and breach of fiduciary duty in violation of the Employment Retirement Income Security Act ("ERISA") and the California Fair Employment and Housing Act ("FEHA"). The plaintiff seeks economic damages, injunctive relief to cease a pending arbitration, and declaratory relief to define applicable ERISA protections in his case. Now before the court is Mazzetti's motion to compel arbitration relating to a stock valuation dispute between the parties and stay plaintiff's action pending arbitration and exhaustion of administrative remedies. In the alternative, defendants seek the dismissal without prejudice of plaintiff's ERISA claims pending administrative exhaustion and arbitration. Having considered the parties' arguments and for the reasons set forth below, the court enters the following memorandum and order.

BACKGROUND[1]

Robin Roderick was an employee of the consulting and engineering firm Mazzetti &

Associates from 1997 until 2003, when he alleges that he was terminated due to his age. At the time of his termination, plaintiff owned 20 shares of Mazzetti common stock. The stock was subject to the company's "1994 Stock Purchase Agreement" ("SPA"), which plaintiff signed on August 4, 1998. The agreement mandated in relevant part that upon termination or retirement, a shareholder must return his shares at a price set by "the most recent annual value determined by the Corporation's Certified Public Accountant or actuary engaged for purposes of the annual valuation of the Corporation's issued and outstanding Shares held and owned by the Corporation's Employee Ownership Plan and Trust." See Rice Dec., Exh. 1 at ¶ 7.1. However, the agreement also stated that if the Plan and Trust were "discontinued and no annual valuation of Shares held and owned by it is made," then the corporation's accountant should apply the "book value" of the issued and outstanding shares, as defined in the agreement. The SPA contained an arbitration section providing that:

> Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, San Francisco, California, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall have the discretion to award costs and attorneys' fees to the prevailing party.

Rice Dec., Exh. 1 ¶ 19.1. Beyond this language mandating arbitration in the SPA, the parties signed no other arbitration agreement in the course of their employment relationship. Neither party asserts that plaintiff's age discrimination claims must be subject to arbitration. Defs' Mot. at 3.

The parties dispute the value of the plaintiff's 20 shares, as well as the legality of the SPA generally. Following Roderick's termination, defendants offered $858.37 per share, the "book value" of the shares, because the Employee Stock Ownership Plan ("ESOP") did not own any company stock at the time of plaintiff's termination. In the present complaint, plaintiff alleges that the proper share price was $2,365, based on his understanding of ESOP's holdings as well as representations allegedly made to him regarding his stock value.

On February 24, 2004, Roderick submitted the parties' dispute over the share repurchase price to arbitration, as instructed in the SPA. Rice Dec., Exh. 2-3. The case commenced in arbitration with the appointment of an arbitrator, Joseph A. Lasky, from the Commercial Panel of the

American Arbitration Association ("AAA"). Rice Dec., Exh. 5. Due to an amount in controversy of less than $75,000, as asserted by plaintiff, and the SPA's provision mandating the application of Commercial Rules, the arbitration proceeded under the AAA's Expedited, Commercial Rules. See Rice Dec., Exh. 6; Pl.'s Opp'n, Exh. 22. At the commencement of the AAA procedures, plaintiff objected to the application of the AAA's Expedited Commercial Rules to his dispute based on his concerns about discovery access, risk of bearing costs, and unequal negotiating power before the arbitrator. See Rice Dec., Exh. 8. Subsequently, in their reply to the present motion, defendants conceded that the AAA Employment Rules may govern the parties' dispute at arbitration. Defs' Reply at 8-9.

On June 21, 2004, plaintiff filed the current action in federal court. He alleges wrongful termination, age discrimination, and breach of fiduciary duty in violation of the Employment Retirement Income Security Act ("ERISA"), as well as age discrimination in violation of the California Fair Employment and Housing Act ("FEHA"). Plaintiff believes that he was terminated from Mazzetti for two reasons: age discrimination and discrimination based on the timing of his entitlement to retirement benefits (so called "benefits-triggered" or ERISA termination). Plaintiff also alleges ERISA violations stemming from the Mazzetti ESOP and the SPA: first, that the ESOP was not a genuine ERISA plan because it failed to acquire company stock in a timely fashion, and second, that the SPA is an employee benefit plan governed by and in violation of ERISA. In his final cause of action, plaintiff seeks declaratory relief to determine the applicable rules and scope of a return to arbitration on the stock dispute.

The parties have raised before the court numerous issues for resolution, namely: (1) whether the plaintiff has exhausted mandatory administrative procedures for his ERISA claims, (2) whether the SPA itself is governed by ERISA, (3) whether the arbitration clause within the SPA is legally enforceable and thus whether the parties are bound to return to arbitration, (4) what the scope of that arbitration should be, if the parties must complete arbitration, and (5) whether further proceedings in this court should be stayed pending arbitration of the SPA dispute.

LEGAL STANDARD

I. Arbitrability

Federal substantive law governs the question of arbitrability. See Simula, Inc. v. Autoliv, Inc., 175 F.3d 716, 719 (9th Cir. 1999). Arbitration is matter of contract and the court cannot require a party to arbitrate a dispute unless the party has agreed to do so. See United Steelworkers of America v. Warrior & Gulf, 363 U.S. 574, 582 (1960). The Federal Arbitration Act ("Act") governs this examination. See 9 U.S.C. § 4.[2] The court's role under the Act is limited to (1) determining whether an enforceable agreement to arbitrate exists and, if it does, (2) deciding whether the agreement encompasses the dispute at issue. See id.; Simula, 175 F.3d at 719-20; Republic of Nicaragua v. Standard Fruit Co., 937 F.2d 469, 477-78 (9th Cir.1991). If the finding is affirmative on both counts, then the Act requires the court to enforce the arbitration agreement in accordance with its terms. See Chiron Corp. v. Ortho Diagnostic Systems, Inc., 207 F.3d 1126, 1130 (9th Cir. 2000). The court may only deny arbitration if "it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." Warrior & Gulf, 363 U.S. at 582-83.

The preference for arbitration is particularly strong when the arbitration clause is broad. See AT&T v. Communication Workers, 475 U.S. 643, 650 (1986). Clauses subjecting claims "arising out of or relating to" a contract are considered broad. See Chiron Corp. v. Ortho Diagnostic Systems, Inc., 207 F.3d 1126, 1131 (9th Cir. 2000) (terming as "broad and far reaching" an arbitration clause covering "any dispute, controversy or claim arising out of or relating to the validity, construction, enforceability or performance of this Agreement"); Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 398 (1967) (describing as "broad" an arbitration clause covering "any controversy or claim arising out of or relating to this Agreement, or the breach thereof").

The threshold for arbitrability is not high. See Simula, 175 F.3d at 719. To trigger an arbitration requirement, the movant's factual allegations need only "touch matters" covered by the contract containing the arbitration clause. See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 624 n.13 (1985) (noting that "insofar as the allegations underlying the statutory

claims touch matters covered by the enumerated articles, the Court of Appeals properly resolved any doubts in favor of arbitrability"); Simula, 175 F.3d at 721. Once the arbitration clause is implicated, the court must permit arbitration, "even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 217 (1985). Once a party has initiated and completed arbitration, he is bound by the outcome, even where he has filed an identical lawsuit prior to the resolution of claims by the arbitrator. See Nghiem v. NEC Electronic, Inc., 25 F.3d 1437, 1440 (9th Cir. 1994).

II. Stay of Proceedings Pending Arbitration

Under section 3 of the Federal Arbitration Act, on the application of one of the parties the court must stay proceedings for arbitrable claims pending arbitration, no matter the prospect of inconsistent verdicts. See Dean Witter Reynolds, 470 U.S. at 217; Moses H. Cone, 460 U.S. at 20. However, a district court has the discretion whether to stay non-arbitrable claims pending the arbitration. See Moses H. Cone, 460 U.S. at 21 n.23 ("In some cases, of course, it may be advisable to stay litigation among the non-arbitrating parties pending the outcome of the arbitration. That decision is one left to the district court . . . as a matter of its discretion to control its docket."). A district court's inherent, discretionary power to control its proceedings should promote economy of time and effort for itself, for counsel, and for litigants. CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). Where a stay is proposed, the court should weigh the competing interests that will be affected, including: the possible damage which may result from granting the stay, the hardship or inequity which a party may suffer in being required to go forward, and "the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." Id. A movant for a stay pending arbitration should be a signatory of the arbitration agreement. See IDS Life Insurance Co. v. SunAmerica, Inc., 103 F.3d 524, 529 (7th Cir. 1996).

DISCUSSION

I. Exhaustion of ERISA Remedies

Defendants argue that Roderick has not exhausted administrative remedies as required under ERISA and provided for under the company's ESOP, a plan that defendants characterize as covered by ERISA. In addition, defendants contend that arbitration itself is an exhaustion prerequisite to Roderick's ERISA claims. Both arguments are unavailing here. In the first instance, the procedures outlined in Section 25.4 are clearly voluntary procedures protecting an employee's right to a hearing, rather than mandating any such process. Section 25.4 of that plan instructs that beneficiaries whose claims for benefits have been denied "shall have the opportunity to file a written request" that a Committee review the employee's claims. Rice Dec., Exh. 12. Defendants have presented no evidence or arguments to suggest that Section 25.4 qualifies as an administrative *requirement* under ERISA, and this court declines to manufacture one here. Thus, this court need not consider plaintiff's argument that any hearing conducted by the committee would be legally "futile" under Diaz v. United Agricultural, 50 F.3d 1478, 1485 (9th Cir. 1995).

Defendants' second argument need not be addressed independently here, as the plaintiff is ordered to resume arbitration of his claims arising under the SPA due to the enforceable arbitration clause binding the parties for such disputes. As for plaintiff's ERISA claims that do not arise under the SPA, but rather, stem from Roderick's termination or his challenge to ESOP management (discussed below in Part II-C), they are not subject to the arbitration exhaustion requirements contained within the ERISA statute itself. See Amaro v. Continental Can Co., 724 F.2d 747, 752 (9th Cir. 1984) (holding that ERISA actions arising out of section 510 need not be submitted to binding arbitration before submission to a federal court). Amaro also noted that district courts may stay "any statutory claim that arises out of substantially the same facts present in an ongoing administrative or arbitral proceeding." Id. That is, in essence, what this court holds in the present action. By returning to arbitrate his dispute arising under the SPA, the plaintiff will have satisfied any exhaustion requirements applicable to his claims.

II. Arbitration of the Stock Valuation Dispute

Whether a contract provides for arbitration of a particular issue is "undeniably an issue for judicial determination." AT&T, 475 U.S. at 648. This court thus addresses the issue of whether the parties' dispute, or aspects of it, should be subject to arbitration. Questions of arbitrability in this case turn on three issues: (1) whether plaintiff has waived his right to object to arbitration by instigating AAA proceedings, (2) whether the parties' Stock Purchase Agreement and its underlying arbitration clause are enforceable, and (3) if the parties are ordered to arbitrate their dispute, what aspects of their dispute that arbitration should address. The court takes these questions in turn.

A. Waiver of the Right to Object to Arbitration

Defendant claims that plaintiff waived his ability to object to arbitration by initiating arbitration. Indeed, the Ninth Circuit has held that once a party has initiated and pursued arbitration, it is bound by the outcome, even where it has filed an identical lawsuit prior to the resolution of claims by the arbitrator. See Nghiem v. NEC Electronic, Inc., 25 F.3d 1437, 1440 (9th Cir. 1994). A voluntary submission to arbitration can encompass employment discrimination charges, as such claims have recently been deemed appropriate for arbitration if Congressional intent permits. Id. at 1441. The policy for broadly construing questions of arbitrability in favor of arbitration also applies to issues of wavier. Id. at 1440 (citing to Mitsubishi, 473 U.S. at 626 for the proposition that broad construction applies "whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability").

Nghiem can only be distinguished from the present action in a single respect: Roderick's arbitration claims had not proceeded past the earliest stages. Whereas plaintiff Nghiem had already reached closing briefs by the time he filed suit in an alternate forum, the parties in the instant case have not begun any arguments on the merits. Indeed, their proceedings in arbitration never completed the earliest stage of determining governing rules and assessing conflicts of interest.[3] Under the Nghiem reasoning, however, such a difference is immaterial: it is the initiation of arbitration, not the termination of it, which renders the arbitration process binding on the parties. This rule is animated by the obvious policy concern that parties may not initiate arbitration and

subsequently terminate due to adverse decisions by the arbitrator. A Nghiem theory of waiver alone would likely compel this court to return the parties to arbitration. That need not be the only pillar of this decision, however, as the SPA itself compels arbitration.

B. Enforceability of the Stock Purchase Agreement

In addition to the potentially binding effect of plaintiff's waiver here, arbitration of the stock dispute is also appropriate in this case under proper interpretation of the SPA. This section addresses plaintiff's two theories for disputing enforcement of the stock agreement and its arbitration provision. Firstly, plaintiff argues that the agreement is unconscionable under California contract law, and secondly, that the SPA is part of a noncompliant, de facto ERISA plan. The plaintiff cannot avoid a return to arbitration of the stock valuation dispute on either theory.

The enforceability of the SPA must be considered in light of contract law, as well as the "liberal federal policy favoring arbitration agreements." Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24 (1983). The FAA was passed in an effort to "place arbitration agreements upon the same footing as other contracts," thus rendering such agreements unenforceable in the absence of a reason, at law or equity, for the revocation of any contract. See Gilmer v. Interstate-Johnson Lane Corp., 500 U.S. 20, 24 (1991). Under the Federal Arbitration Act, state contract law applies to questions of arbitration agreement validity. See First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995); Circuit City Stores, Inc. v. Adams, 279 F.3d 889, 892-93 (9th Cir. 2002).

Plaintiff argues that under principles of California contract law, the SPA was procedurally and substantively unconscionable. Pl.'s Mot. at 14-17. Indeed, defenses to contract formation, such as unconscionability, may invalidate arbitration agreements. Adams, 279 F.3d at 892. Under California law, substantive unconscionability, which addresses the harshness of contract terms, and procedural unconscionability, which addresses the balance of bargaining power between the parties, are required to invalidate a contract. Id. at 893. See also Armendariz v. Found. Health Psychcare Svcs., Inc., 24 Cal.4th 83 (Cal. 2000); Stirlen v. Supercuts, Inc., 51 Cal.App.4th 1519 (Cal.App.1.Dist. 1997).

As described in Armendariz and echoed in Adams, California law finds unconscionability upon a showing of economic pressure to sign the disputed contract (especially in the pre-employment stage), lack of mutuality in the mandate to arbitrate, and limitations on damages in violation of public policy and statutory rights. See Armendariz, 24 Cal.4th at 113-121; Adams, 279 F.3d at 892-95. The SPA is not unconscionable under these standards for several reasons: (1) it was not mandatory for employees, nor was it a prerequisite for employment, (2) it did not contain the asymmetrical duty to arbitrate issue central to Armendariz, because both parties under the SPA were obligated to submit SPA disputes to arbitration, and (3) the arbitration clause contained no substantive provisions regarding the nature of available relief, the applicability of stricter standards for dispute resolution, or other restrictions that grossly limit a complainant's entitlement to relief.

A key focus of plaintiff's objections to arbitration is the application of the AAA's Commercial Rules, as provided for under the SPA. In its reply brief, defendants conceded this point and have agreed to invoke AAA Commercial Rule R-1 to agree to a change of rules in the arbitration proceeding. Def.'s Reply at 8-9. The application of the Employment Rules, with their explicit commitment to fairness, equity, and due process, should address several of plaintiff's concerns regarding the risk of bearing fees, discovery power to access key evidence, the power to subpoena witnesses and documents, and the symmetry of negotiating power before the arbitrator generally. Most significantly, under Rule 39 of the Employment Rules, the employer bears the burden of all expenses of arbitration unless the parties agree otherwise. See AAA Nat'l Rules for the Resolution of Employment Disputes Rule 39.

The plaintiff's second argument for disputing the enforceability of the SPA is that the company's stock purchase arrangement is a de facto employee benefit plan which is noncompliant with ERISA statutory protections.[4] Pl.'s Mot. at 9-12. Plaintiff argues that the SPA is an employee benefit plan and, evaluated under the Donovan test for ERISA coverage, the SPA is governed by ERISA protections. Pl.'s Supp. Brief at 1. By contrast, defendants argue that the SPA is not an employee benefit plan under the meaning of ERISA, but rather a buy-sell agreement governed exclusively by California law. Defs' Supp. Brief at 1. Indeed, defendants claim that it would be a

radical and unprecedented act for this court to deem the stock purchase agreement of a closely held corporation to be preempted by ERISA. Id.

The factual characteristics of the stock purchase arrangement at issue here are as follows. Select employees of defendant employer were invited to purchase shares of company stock using their own income from wages, bonuses, or other employee assets. Defs' Reply at 14. The employer did not contribute to the stock purchase (though of course employees could use bonuses or wages to purchase the stock) and employees owned their stock outright, individually, and in full. Defs' Supp. Brief at 6. As a condition of the sale, employees were required to sign the SPA, an agreement containing a restrictive covenant that upon happening of a stated event, such as retirement, death, or termination, employees were required to resell their stock to the corporation. Rice Dec., Exh. 1. Upon the happening of a stated event, the SPA provided that the company had 120 days in which to pay a down payment of at least 10% of the purchase price, with the balance of the purchase price to be paid in sixty monthly installments. Faust Dec., Exh. 20 at 2; Rice Dec., Exh. 1 at ¶ 8.4(b).

Plans such as the SPA are typical of closely held corporations. See Stephenson v. Maxwell Bruce Drever, 16 Cal.4th 1167, 1173 (Cal. 1997). As was the case here, such buy-sell agreements often specify a method for determining the repurchase price of the shares. Id. The California Supreme Court has characterized the purposes of such arrangements as twofold: (1) to permit the original owners of the corporations to retain control, and (2) to "protect the investment of the departing. . . shareholder by facilitating the valuation and sale of an interest that might otherwise have no ready market." Id. Despite this characterization as a buy-sell agreement, this court must evaluate whether the SPA is an employee benefit plan under the meaning of ERISA.

To determine whether ERISA covers the SPA, plaintiff urges this court to apply the test announced in Donovan v. Dillingham, 688 F.2d 1367 (11th Cir. 1982).[5] See Carver v. Westinghouse Hanford Co., 951 F.2d 1083, 1086 (9th Cir. 1991) (adopting the Donovan test for interpreting employee benefit plans). Plaintiffs are correct that Donovan and its progeny in the Ninth Circuit govern questions of what arrangements constitute "plans" that are sufficiently "established and maintained" to be governed by ERISA, i.e., what minimum formal characteristics are required for an

arrangement to qualify as a "plan, fund, or program" covered by ERISA. See, e.g. Blau v. Del Monte Corp., 748 F.2d 1348, 1355-56 (9th Cir. 1984) (adopting the Donovan reasoning that an informal and unwritten form of a plan does not bar ERISA coverage); Scott v. Gulf Oil, 754 F.2d 1499, 1352 (9th Cir. 1985) (holding that an informal severance pay arrangement could satisfy the administrative requirements of "employee benefits plans" under ERISA). However the language of the ERISA statute itself governs a threshold question that plaintiff overlooks: whether a workplace arrangement falls within the scope of ERISA's purpose. See Donovan, 688 F.2d at 1371 (describing as "self-explanatory or defined by statute" that the plan must be maintained for the purposes stated in the statute).

ERISA enumerates two types of employee benefit plans designed for two different purposes. The statute defines an "employee welfare benefit plan" as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or an employee organization . . . *for the purpose of providing*" certain benefits to participants, including medical, vacation, disability, death, and other benefits expressly excluding retirement. 29 U.S.C. § 1002(1) (emphasis added).[6] See also Donovan, 688 F.2d at 1372, 1373 (emphasizing that "welfare benefit plans" defined in 29 U.S.C. § 1002(1) must be "established and maintained for specified purposes," namely health, accident, disability, and other named benefits under the statute). The second type of employee benefit plan is an "employee pension benefit plan," which covers "any plan, fund, or program" which "*provides retirement income security* to employees, or *results in deferral of income by employees* for periods extending to the termination of covered employment. . ." 29 U.S.C. § 1002(2) (emphasis added). See Carver, 951 F.2d at 1086 (describing ERISA as "a remedial statute which Congress enacted to protect employee pension benefit rights and to protect employers from conflicting and inconsistent state and local regulations of pension benefit plans").

The key issue is thus whether the SPA can be construed as a plan established for the purpose of retirement income security. Plaintiff argues that the nature of the repurchase scheme under the SPA, namely the payout of a promissory note over sixty monthly installments, is a hallmark of a deferred compensation scheme. Faust Dec., Exh. 20 at 2; Rice Dec., Exh. 1 at ¶ 8.4(b). Yet

ownership of the stocks was not deferred in any way; it was individualized, immediate, and fully alienable among authorized shareholders. See Pl.'s Opp'n at 4 (describing that plaintiff was "immediately vested in the stock that he paid for with his own money"). While Roderick's purchase of Mazzetti stocks may have been personally intended as retirement security, the company's purpose in arranging the sale of stock in their closely-held corporation was simply capital accumulation and ownership control. See Murphy v. Inexco Oil Co., 611 F.2d 570, 575 (5th Cir.1980) (holding that even where employees might see payments after retirement, a stock bonus plan was not covered by ERISA because its central purpose was not retirement security). The characteristic of the repurchase plan allowing for a payout in installments was not for the sake of retirement security, though it may have had that incidental effect, but rather to protect against the financial risk of single buyouts of large shareholders. By contrast, the contested plans in Carver, a case cited by plaintiff, were concededly for the purpose of retirement security. See Carver, 951 F.2d at 1085-86 (describing the alleged plan at issue as a merger of pension plans prior to a corporate consolidation and noting that defendants "never denied the existence of a pension plan").

Plaintiff describes the intended purpose of the Mazzetti plan as "ownership of equity in Mazzetti . . . as well as the opportunity add value to that equity every day." Pl.'s Opp'n at 4. That characterization, with which this court agrees, makes the Mazzetti plan similar in purpose to stock option and stock bonus incentive plans.[7] The Third Circuit has noted that few cases have addressed the question of whether a stock option plan falls within the scope of ERISA. See Oatway v. American International Group, Inc., 325 F.3d 184, 187 (3rd Cir. 2003). In that case, the court held that stock options granted as employee bonuses were not deferred compensation agreements subject to ERISA. Id. at 189 (affirming a district court decision that a stock option plan was not covered by ERISA because it was "not designed specifically to provide employees with medical, unemployment, disability, death, vacation, or other specified benefits or to provide income following retirement.") Both the Third and Fifth Circuits have noted that the fact that an employee intends to use his stock purchases towards his retirement is not indicative of the nature of the plan. See Murphy, 611 F.2d at 575 (holding that "any outright conveyance of property to an employee might result in some payment

to him after retirement," but that a stock bonus plan was not covered by ERISA because its central purpose was not retirement security.) These cases rely on the premise that the potential retirement income offered by stock purchase plans is only incidental to their stated purposes, including attracting and retaining key employees in a stock bonus incentive plan or accruing corporate capital and maintaining ownership by insiders using a buy-sell agreement in a closely held corporation. See Foltz v. U.S. News & World Report, 627 F.Supp. 1143 (D.C.Cir. 1986) (holding that a stock bonus plan granting certain employees common stock which could not be sold without company approval and which employee was required to sell back to company upon retirement or termination was not an "employee pension plan" within meaning of ERISA).

In the current case, the SPA arrangement at Mazzetti is even less susceptible to interpretation as an ERISA plan than a stock incentive or bonus plan. In the case of the SPA, employees voluntarily purchased company stock with their own funds and owned that stock interest instantaneously and permanently, with no deferred ownership, nor any pooled trust of employee funds. In so doing, employees became subject to a restrictive covenant regarding resale and acquired the right to enforce the closely-held corporation's fiduciary duties. As in Oatway and Murphy, the stock plan at issue in the present action thus does not satisfy the statutory language and purpose of ERISA. As a result, this court need not reach the specific Donovan factors for determining whether the formal characteristics of the arrangement constituted a "plan, fund, or program" that was sufficiently "established or maintained" so as to fall within ERISA coverage.

In addition to the reasoning outlined above, this court agrees with defendants that interpreting the stock plan at issue here as subject to ERISA would unjustifiably intrude on California law governing buy-sell agreements. ERISA pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." 29 U.S.C. § 1144. See Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 8 (1987). In order to be pre-empted, a state statute must have some "connection with, or reference to, a *plan*" recognized under ERISA. Fort Halifax, 482 U.S. at 8. The general presumption applies that absent a manifest intent to the contrary, "Congress did not intend to pre-empt areas of traditional state regulation." See Metropolitan Life Insurance Co. v.

Massachusetts, 471 U.S. 724, 740 (1985). It would thus be unreasonable for this court to construe ERISA to pre-empt California law governing corporate fiduciary duties in buy-sell agreements of closely held corporations, as described in Stephenson v. Maxwell Bruce Drever, 16 Cal.4th 1167 (Cal. 1997) and a long line or prior state cases. Such laws do not govern plans for employee retirement security and thus do not fall within the scope of state law pre-empted by ERISA.

The SPA is not an employee benefit plan governed by ERISA. This court will therefore not evaluate the independence (or lack thereof) of the appraisal of the company stock value under the SPA in terms of compliance with ERISA.

C. The Scope of Arbitration

The question appropriately remaining before this court concerns the *arbitrability* of plaintiff's claims. Plaintiff rightfully asserts that the question of arbitrability is for judicial determination. Litton Financial v. Nat'l Labor Relations Board, 501 U.S. 190, 208 (1991). The arbitration clause contained in the SPA, covering "[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof," is the only arbitration clause at issue in this case. The parties have presented no other employment contract, employment manual, or other document which would potentially bind the parties to pursue arbitration arising from employment-related disputes. The issue here is therefore the scope of arbitration mandated by the SPA. Under the terms of the agreement, "arising under or related to" the SPA would concern limitations on the transfer or liquidation of any stocks covered under the SPA and the mandate that upon termination of employment for any reason, the corporation would purchase the employee's shares at a price and on the terms provided in the agreement. See Rice Dec., Exh. 1 ¶ 4.1.

To interpret the scope of the arbitration's coverage, this court begins with the general proposition that arbitration clauses must be broadly construed, particularly where they use the language "arising under" an agreement or contract. See Chiron, 207 F.3d at 1131. Such a construction would undisputably cover the parties' dispute over the method of stock valuation employed to repurchase an employee's shares upon termination, as the stock valuation process is contained with an agreement and arbitration clause that this court upholds as valid. This dispute has

already been submitted to arbitration and is ordered to resume there. The more difficult arbitrability questions concern the reach of the SPA arbitration clause into plaintiff's claims that the ESOP was noncompliant with ERISA. In addition, arbitrability questions remain regarding plaintiff's benefits-triggered, ERISA-based termination claim that a dramatic upcoming increase in his stock value motivated his termination. Defendants do not argue that plaintiff's FEHA based age discrimination claim is subject to arbitration.

The applicability of the SPA's arbitration clause to plaintiff's claims is judged by a two-step inquiry: (1) first, whether the parties' agreement to arbitrate reached the ERISA claims at issue, and (2) if it did, whether legal constraints outside the parties' agreement foreclosed the arbitration of those claims. See Mitsubishi Motors Corp., 473 U.S. at 628. This court thus applies each step of the Mitsubishi test to plaintiff's ERISA claims of violations by the company ESOP and benefits-triggered termination.

Plaintiff has alleged that the Mazzetti ESOP was a "pseudo-ERISA plan" that was not in compliance with ERISA, because the ESOP failed to acquire company stock in a timely fashion, breached ERISA fiduciary duties, failed to inform beneficiaries of plan management decisions, and misrepresented stock value. The first step of the Mitsubishi analysis of arbitrability investigates whether the contested claims are encompassed by the arbitration clause at issue. Id. The Ninth Circuit instructs that "arising under" language in arbitration clauses is to be construed broadly, but it "limits the clause to disputes concerning the contract itself," rather than "every dispute between the parties having a significant relationship to the contract and all disputes having their origin or genesis in the contract." Simula, 175 F.3d at 721. The SPA and the instrument creating the ESOP are distinct documents that do not incorporate one another by reference. The only link between the two is the method of stock valuation under the SPA, which provides that book value will be applied where the ESOP has not acquired company stock. While this link will require investigation into *whether* the ESOP was "discontinued" under the meaning of the SPA for purposes of stock valuation, it need not encompass ERISA allegations concerning *why* the ESOP was discontinued, nor whether such a defunct status constituted a violation of ERISA. The arbitration clause in the SPA,

signed only by individual shareholders of common stock, is an insufficient gateway to claims that defendants violated ERISA in their management of the company ESOP for all employees. The ESOP system of retirement benefits was governed by a different instrument, entirely separate from the SPA, which contains no arbitration provision.[8] Because plaintiff's ERISA claims arising under the ESOP are not encompassed by the SPA arbitration clause, this court need not reach external constraints on arbitrability, the second step in the Mitsubishi analysis.

Plaintiff also alleges that he was under pressure to retire in 2003, and that when he declined to do so, he was strategically terminated a mere few weeks before the Mazzetti ESOP acquired company stock—an event that would allegedly have dramatically increased the value of his shares of common stock. Under step one of the Mitsubishi inquiry, this claim is beyond the reach of the arbitration clause contained within the SPA, because it arises from the parties' employment relationship, not from the buy-sell agreement or the restrictive covenants therein. Though the SPA describes the method by which plaintiff was ordered to sell his company shares upon termination, it does not encompass management relations, ESOP governance or decision-making, or employment relations. To allow an agreement relating to the voluntary acquisition of company stock—signed after the commencement of employment—to dictate dispute resolution of allegations relating to benefits-triggered termination would contradict the general Congressional preference for the adjudication of statutory protections in federal court. See, e.g., Prudential Insurance Co. of America v. Lai, 42 F.3d 1299, 1304 (9th Cir. 1994) (stating that the public policy of preventing discrimination is at least as strong as the public policy favoring arbitration). This court thus finds that the plaintiff's ERISA grievances arising from the timing and cause of his termination, like his age discrimination claims under FEHA, are beyond the scope of the parties' stock dispute arbitration.

In sum, plaintiff is not required to return to arbitration on his allegations that the Mazzetti ESOP violated ERISA, nor his allegation that his termination was triggered by a coming change in his stock value. However the plaintiff is obligated to return to arbitration on the valuation of his stock for three reasons. First of all, the plaintiff himself instigated arbitration on the value of his stocks under the Agreement, and thus waived his right to object to the arbitration of those claims.

Secondly, the SPA is an enforceable contract under California law, and thus its arbitration clause must be interpreted in light of the strong federal policy favoring the broad construction of arbitration agreements in favor of arbitration. Lastly, even though this court finds that the age discrimination and benefits-triggered termination claims arising under ERISA and FEHA are not subject to arbitration, it does not entitle plaintiff to lift his entire dispute out of arbitration. The Supreme Court has interpreted the Arbitration Act to compel district courts to mandate arbitration of pendent arbitrable claims, even where doing so would fracture a dispute into two proceedings in separate forums. See Byrd, 470 U.S. at 217.

III. Stay of Action Pending Arbitration

Based on the foregoing, the parties will return to arbitration on the issue of the value of plaintiff's 20 shares of Mazzetti common stock, as well as the related issues of fiduciary breach and independent management arising from corporate decisions affecting stock value. The Federal Arbitration Act compels district courts to direct parties to arbitration on any matters for which an arbitration agreement has been signed, and therefore this court must stay an action referable to arbitration under the Act.[9] This court has no discretion to hear the questions arising under the SPA-governed stock valuation dispute. See Byrd, 470 U.S. at 218.

However, a stay on non-arbitrable claims raised here is a discretionary decision for this court. See Moses H. Cone, 460 U.S. at 21 n.23. This decision to stay a proceeding considers the competing interests which will be affected, including: the possible damage which may result from granting the stay, the hardship or inequity which a party may suffer in being required to go forward, and "the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." CMAX, 300 F.2d at 268.

Weighing the CMAX factors here, this court finds that plaintiff's non-arbitrable claims should be stayed pending the outcome of the stock valuation dispute. Such a stay will not prejudice or preclude the plaintiff's claims relating to ESOP plan management and his termination, as these aspects of the parties' dispute lie beyond the reach of the arbitration clause in the SPA. For reasons

of judicial economy and efficiency, it will be preferable to hear plaintiff's non-arbitrable claims following the disposition of his stock valuation dispute. Exploration of the mechanics and consequences of the SPA valuation method in arbitration will render it more efficient for this court to evaluate allegations of ESOP malfeasance and benefits-triggered termination. This court thus stays the adjudication of these issues until the resolution of plaintiff's arbitrable claims.

CONCLUSION

For the foregoing reasons, the court hereby GRANTS defendants' Motion to Stay the Proceedings pending arbitration of the stock valuation dispute. The parties shall notify the court within ten (10) days of receipt of the arbitrator's decision.

IT IS SO ORDERED.

Dated: Nov 9, 2004

MARILYN HALL PATEL
United States District Court Judge
Northern District of California

ENDNOTES

1. All facts are taken from plaintiff's complaint unless otherwise noted.

2. The Act states that "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court. . .for an order directing that such arbitration proceed in the manner provided for in such agreement." 29 U.S.C.A. § 4.

3. Roderick sought to terminate his arbitration on the basis of objections to the arbitrator's procedural decisions in his case, including the choice of the AAA's Expedited Commercial Rules. One of these decisions, namely the application of Commercial Rules to his case, has already been conceded by defendant, and plaintiff does not allege that the amount in controversy in the SPA dispute exceeds $75,000, the minimum amount necessary for non-expedited rules to apply. Rice Dec., Exh. 6.

4. This court invited the parties to submit supplemental briefs on the specific issue of ERISA applicability to the SPA.

5. As applied by the Ninth Circuit, the test instructs that a pension benefit plan may be created if "from the surrounding circumstances, a reasonable person can ascertain the intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits." Carver v. Westinghouse Hanford Co., 951 F.2d 1083, 1086 (9th Cir. 1991) (citing Donovan v. Dillingham, 688 F.2d 1367, 1373 (11th Cir. 1982)).

6. The full language of the statute provides: "[A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care, or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions)." 29 U.S.C. § 1002(1). Section 186(c) includes plans providing holiday and severance benefits. See 29 C.F.R. § 2510.3(a)(3).

7. Cash bonus plans are expressly not covered by ERISA "unless such payments are *systematically deferred* to the termination of covered employment or beyond, or *so as to provide retirement income* to employees." See 29 C.F.R. § 2510.3-2 (emphasis added).

8. This finding is consistent with the court's holding that the SPA is not governed by ERISA. It would be contradictory for this court to hold, as defendants urge this court to do, that the ESOP and the SPA are insufficiently intertwined to subject the SPA to ERISA protections, and yet also find that ESOP management was a matter "arising under" the SPA.

9. See 9 U.S.C.A. § 3 ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.")